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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,894	04/12/2004	Kevin Embree	2043.127US1	3999
49845 7590 01/02/2009 SCHWEGMAN, LUNDBERG & WOESSNER/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402				
EXAMINER CARTER, CANDICE D				
ART UNIT 3629		PAPER NUMBER		
NOTIFICATION DATE 01/02/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM

### Office Action Summary

**Application No.**

10/822,894

**Applicant(s)**

EMBREE, KEVIN

**Examiner**

CANDICE D. CARTER

**Art Unit**

3629

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The Following is a Final Office Action in response to communications received on October 6, 2008. Claims 1-9, 11, 21, and 22 have been amended. Claims 10 and 20 have been cancelled. No new claims have been added. Therefore, claims 1-9, 11-19, 21, and 22 are pending and have been addressed below.

#### ***Response to Amendment***

2. Applicant has amended claims 1, 11, 21, and 22 and cancelled claims 10 and 20 to overcome the 35. U.S.C. 112, second paragraph rejections. The 35 U.S.C. 112, second paragraph rejections with respect to those claims have been withdrawn

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. **Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claims 1-10 are directed to a system to detect outlying behavior in a network-based marketplace consisting, essentially, of software modules. The term "module" is not recited as having corresponding structure in the specification and given its broadest reasonable interpretation can be construed as nothing more than program code. Therefore the claims are directed to nothing more than a program code per se and are non-statutory.

The recitation of "computer implemented system" in the preamble of the claim is not enough to qualify the claimed subject matter as a statutory.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 1-3, 5, 8, 10, 11-13, 15, 18, and 20-22 are rejected under 35**

**U.S.C. 102(e) as being anticipated by Harding et al. (2005/0144052, hereinafter Harding).**

As per claim 1, Harding discloses "A computer implemented system to detect outlying behavior in a network-based marketplace, the computer implemented system including:

a collection module to collect attribute information for a first plurality of sellers that includes a first seller and to store the attribute information in a storage device" (Fig. 1 discloses a storage device for storing attribute information and ¶ 25 discloses collecting information about a seller's performance, where this information reflects the sellers attributes);

"a computing module to compute peer information associated with a second plurality of sellers, the second plurality of sellers comprising a subset of said first

plurality of sellers, the peer information computed comprising statistics computed from the attribute information for the second plurality of sellers" (§ 29-31 discloses computing seller scores/ratings for the sellers, where the total group of sellers represents the first group of sellers and where a feedback rating of 1 or 2 denotes sellers with a negative rating and a rating of 5 denotes sellers with a positive rating; sellers with negative or positive ratings represent second groups of sellers; Examiner construes the second group to be a subset of the first group and § 26 discloses computing statistics for the sellers);

"a comparison module to compare the peer information associated with the second plurality of sellers with attribute information for the first seller" (§ 42 discloses comparing scores of the seller to a minimum seller score threshold to determine if sellers are recommended sellers or not, where the comparison is done against other sellers that do or do not exceed the minimum seller score threshold; e.g. a seller is considered to be recommended in comparison to other sellers who do not have scores high enough to be considered recommended sellers);

"and a detection module to detect outlying behavior by the first seller based on the comparison" (§ 42 discloses determining whether the seller should be designated as a recommended seller, where recommended sellers are outliers).

Claims 11, 21, and 22 recite equivalent limitations to claim 1 and are, therefore, rejected using the same art and rationale as set forth above.

As per claim 2, Harding discloses "the first plurality of sellers includes sellers that have listed an item for sale, via the network-based marketplace, in a first category of items" (Fig. 4 shows a seller that has listed an item for sale in the electronics category).

Claim 12 recites equivalent limitations to claim 2 and is, therefore, rejected using the same art and rationale as set forth above.

As per claim 3, Harding discloses "the attribute information includes at least one of information to open a listing, information to close a listing and feedback information" (§ 25 discloses feedback information volunteered by buyers).

Claim 13 recites equivalent limitations to claim 3 and is, therefore, rejected using the same art and rationale as set forth above.

As per claim 5, Harding discloses "attribute information includes a plurality of attributes" (§ 25 lists the various seller attribute information that is collected by the system).

Claim 15 recites equivalent limitations to claim 5 and is, therefore, rejected using the same art and rationale as set forth above.

As per claim 8, Harding discloses "the second plurality of sellers is a high value peer group, and the comparison to module is to classify first seller is classified as high value seller" (§ 46 discloses designating sellers as featured sellers).

Claim 18 recites equivalent limitations to claim 8 and is, therefore, rejected using the same art and rationale as set forth above.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harding in view of Cheng et al. (2002/0059130, hereinafter Cheng).**

As per claim 4, Harding discloses all of the elements of the claimed invention but fails to explicitly disclose "the detection module is to automatically detect at least one of a fraudulent activity and a customer segmentation".

Cheng discloses a method and apparatus to detect fraudulent activities within a network based auction facility (abstract).

Therefore, it would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the profiling of sellers in a multiple seller marketplace of Harding to include the detection of fraudulent activities as taught by Cheng in order to deter sellers from conducting suspicious transactions in an auction environment.

Claim 14 recites equivalent limitations to claim 4 and is, therefore, rejected using the same art and rationale as set forth above.

9. **Claims 6, 7, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harding.**

As per claim 6, Harding discloses computing peer information using statistics (§ 26 discloses determining seller statistics).

Harding, however, fails to explicitly disclose “computing the peer information as a standard deviation and a mean”.

It would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the profiling of sellers in a multiple seller marketplace of Harding to include the computing peer information as a standard deviation and mean because it is old and well known to use standard deviation and mean to conduct statistical analysis.

Claim 16 recites equivalent limitations to claim 6 and is, therefore, rejected using the same art and rationale as set forth above.

As per claim 7, Harding discloses classifying sellers as recommended sellers (§ 42).

Harding, however, fails to explicitly disclose “the second plurality of sellers is an average seller peer group, and the comparison module is to classify the first seller as an average seller”.

It would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the profiling of sellers in a multiple seller marketplace of Harding to include the classification of sellers as average sellers in order to distinguish average sellers from recommended sellers or below average sellers.

Claim 17 recites equivalent limitations to claim 7 and is, therefore, rejected using the same art and rationale as set forth above.



**10. Claims 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harding in view of Amazon.com (2000).**

As per claim 9, Harding discloses all of the elements of the claimed invention but fails to explicitly disclose "the second plurality of sellers is associated with a first country, and the comparison module is to associate the first seller with the first country".

Amazon discloses an online auction having international sites for different countries (pg. 2 via Our International Sites, where the international sites associate international sellers with a particular country).

Therefore, it would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to modify the profiling of sellers in a multiple seller marketplace of Harding to include the association of sellers with particular countries as taught by Amazon.com in order to facilitate the use of the system by sellers from different countries.

Claim 19 recites equivalent limitations to claim 9 and is, therefore, rejected using the same art and rationale as set forth above.

***Response to Arguments***

11. Applicant's arguments filed October 6, 2008 have been fully considered but they are not persuasive.

In response to arguments for claims 1, 11, 21, and 22, that the Harding reference fails to disclose the relative system based upon comparing a seller to its peers, Examiner respectfully disagrees. Examiner contends that the distinction of sellers as recommended sellers is done in comparison of those sellers whose scores have not

exceeded the threshold; therefore, as compared to the seller's peers the seller is determined to be recommended.

In response to arguments in reference to claims 2-9, and 12-19, all rejections made towards the dependent claims are maintained due to a lack of reply by the applicant in regards to distinctly and specifically pointing out the supposed errors in the examiner's prior office action (37 CFR 1.111). The Examiner asserts that the applicant only argues that the dependent claims should be allowable because the independent claims are unobvious and patentable over the prior art.

In response to the 35 U.S.C. 101 rejections of claims 1-10, the rejection has been maintained because the recitation of a computer implemented system in the preamble of the claim is not enough to qualify the claim as a statutory system.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Meesseman (2004/009833) discloses a administrative support system for a seller using an online auction site. Arora et al. (2002/0013760) discloses a system and method for implementing electronic markets. Arellano (7,162,494) discloses a method and system for distributed user profiling system.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CANDICE D. CARTER whose telephone number is (571) 270-5105. The examiner can normally be reached on Monday thru Thursday 7:30am- 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 3629

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